

Message Text

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ACTION EB-07

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TAGS: ETEL: CA

SUBJ: TELEVISION POLICY QUESTION: "NON-SIMULTANEOUS
SUBSTITUTION"

REF: (A) OTTAWA 1767; (B) STATE 110510

1. BEGIN SUMMARY. RABINOVITCH (DIRECTOR GENERAL, SOCIAL
POLICY AND PROGRAMS BRANCH, DEPARTMENT OF COMMUNICATIONS)
AND STEIN (DIRECTOR, POLICY SECRETARIAT IN RABINOVITCH'S
BRANCH) MET WITH TCO MAY 5 FOR FURTHER DISCUSSION OF "NON-
SIMULTANEOUS SUBSTITUTION" AS BASIS FOR DEALING WITH
BORDER STATIONS' CANADIAN OPERATIONS. DOC REPS DESCRIBER
DETAILS AND IMPLICATIONS OF THIS CONCEPT. THEY INDICATED
THEY EXPECT TO ARRANGE DISCUSSIONS WITH THE U.S. TRADE
UNIONS WHOSE MEMBERS ARE THE BENEFICIARIES OF RESIDUAL
PAYMENTS TRIGGERED BY REPEAT USES OF PROGRAMS. THEY ALSO
SUGGESTED USG/GOC DISCUSSION OF CONCEPT MIGHT BE USEFUL BUT
THIS APPEARS TO BE DOC INITIATIVE THAT HAS NOT BEEN CLEARED
WITH EXTAFF OR CRTIC EITHER IN RELATION TO A SECOND
INTERGOVERNMENTAL MEETING OR AS SUBSTITUTES
THEREFORE. END SUMMARY.

2. UNDER PRESENT ARRANGEMENTS, CANADIAN BROAD-
CASTERS PURCHASE RIGHTS TO TWO PLAYS OF U.S. PROGRAMS WHICH
ARE GENERALLY PROVIDED IN PACKAGES OF 22-24 INSTALLMENTS
PER YEAR. THESE IS AN INITIAL PLAY, WHICH MAY INVOLVE
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PRERELEASE, AND A SUBSEQUENT REPEAT PLAY LATER IN 39-

WEEK SEASON. FOR THESE RIGHTS THEY PAY BETWEEN \$4,000 AND \$10,000 PER HOUR, IN CONTRAST WITH U.S. NETWORK RATES OF \$100,000 TO \$250,000 PER HOUR. IF CANADIAN STATIONS MAKE A SUBSEQUENT PLAY, RESIDUAL PAYMENTS ARE TRIGGERED AT ABOUT 10 PERCENT OF THE U.S. RATE. FOURTH AND SUBSEQUENT PLAYS WOULD BE AT SOMEWHAT LESS THAN TEN PERCENT. DOC FEELS CANADIAN STATIONS SHOULD BE ABLE TO CONTRACT FOR THIRD AND PERHAPS SUBSEQUENT PLAYS MORE EASILY. THEY SHOULD PAY FOR THESE AT A RATE REFLECTING THE CANADIAN INITIAL PRICE RATHER THAN THE U.S. PRICE. THESE ADDITIONAL PLAYS WOULD THEN BE UTILIZED FOR SUBSTITUTION ON THE CABLE SYSTEMS WHEN A U.S. STATION IS SHOWING A PROGRAM THAT CANADIAN STATIONS HAVE BOUGHT. EFFECT OF THIS OPERATION WOULD BE TO PROTECT THE RIGHT OF CANADIAN STATIONS TO PLAY PROGRAMS THEY HAVE BOUGHT FOR SHOWING WITH THEIR COMMERCIALS--WITHOUT COMPETITION FROM U.S. STATIONS (WITH COMMERCIALS AIMED AT CANADA) WHO HAVE ACQUIRED FROM PRODUCERS OR NETWORKS RIGHTS FOR SHOWING IN U.S. ONLY.

3. FOR PAST YEAR DOC HAS BEEN ACTIVELY STUDYING NATURE OF PROGRAM MARKET. RABINOVITCH AND STEIN STATED THAT INFO IS NOT EASILY AVAILABLE IN PUBLIC DOMAIN BUT THEY BELIEVE THEIR SKETCHY KNOWLEDGE OF DETAILS OF PROGRAM RIGHTS IS ACCURATE AS FAR AS IT GOES. (THEY HAVE PROMISED TCO PAPER OUTLINING SITUATION MORE FULLY WHICH WILL BE FORWARDED TO WASHINGTON WHEN RECEIVED). STUDIES SUGGEST BIGGEST OBSTACLE TO IMPLEMENTATION OF NON-SIMULTANEOUS SUBSTITUTION CONCEPT MAY BE UNIONS (PRIMARILY AMERICAN FEDERATION OF TV AND RADIO ARTISTS). CANADIAN BROADCASTERS REACTED NEGATIVELY WHEN IDEA FLOATED WITH THEM (SINCE THEY EXPECT BILL C-58 AND COMMERCIAL DELETION POLICY TO SOLVE THEIR PROBLEMS) BUT THEIR ONLY SPECIFIC ARGUMENT WAS THAT U.S. UNIONS WOULD NOT COOPERATE.

4. STEIN NOTED THAT THIRD AND SUBSEQUENT PLAYS ARE RELATIVELY RARE BUT MIGHT BE MORE FREQUENT IF COMPENSATION SYSTEM BASED ON CANADIAN PRICE, THUS PERHAPS INCREASING THE AGGREGATE RESIDUALS PAID BY CANADIAN BROADCASTERS.

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THEY WOULD LIKE TO DETERMINE WHETHER THERE IS ANY FLEXIBILITY IN THE UNION POSITION IN RELATION TO THE CANADIAN MARKET (THEY ADMITTED UNION OBJECTIVES IN U.S. RE CABLE AND PAY TV MIGHT CONFLICT) AND EXPECT TO INITIATE CONTACT WITH U.S. UNION. STEIN BELIEVES SANFORD WOLFF, EXECUTIVE SECRETARY OF AFTRA, IS THE PLACE TO START, BUT HAS ASKED IF THE STATE DEPARTMENT CAN SUGGEST ANY OTHER UNION OFFICIAL THEY SHOULD ALSO

TALK TO. (PERHAPS THE EUR LABOR ADVISER COULD BE HELPFUL
ON THIS POINT.)

5. THESE DOC OFFICIALS BELIEVE THE U.S. STATIONS WILL
NOT SUPPORT THIS APPROACH UNLESS IT WERE LIMITED TO
ELIMINATING ONLY THE COMMERCIALS IN THE BODY OF THE
SHOW (WHICH ARE GENERALLY NETWORK ORIGINATED) AS
DOC BELIEVES THE BORDER STATIONS' INCOME FROM "ADJACENCIES"
IS A MORE SIGNIFICANT COMPONENT OF THEIR CANADIAN
REVENUES. AS SUGGESTED PARA 9 OF REF B, THE DEPARTMENT
SHOULD CONTINUE TO EXPLORE THIS CONCEPT WITH THE U.S.
STATIONS WHO SHOULD BE ABLE TO ASCERTAIN HOW THEIR REVENUES
BREAK DOWN.

6. RABINOVITCH AND STEIN SUGGESTED THAT IT WOULD BE
USEFUL FOR U.S. AND CANADIAN AUTHORITIES TO MEET TO
DISCUSS THE NON-SIMULTANEOUS SUBSTITUTION CONCEPT BUT
THEY WERE VAGUE ABOUT HOW SUCH A MEETING MIGHT RELATE TO
THE ONGOING BILATERAL DIALOGUE. THEIR SUGGESTION
APPARENTLY HAS NOT BEEN CLEARED WITH EXTAFF OR CRTC.
WE WOULD NOT RULE OUT POSSIBILITY THAT DOC REPS MAY RAISE
MATTER IN COURSE OF THEIR NORMAL CONTACTS WITH FCC.
ENDERS

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